

MONTANA LEGISLATIVE HISTORY

Chapter 587 19 89

Bill H _____ S 286 Original bill & history X C

H. Committee on STATE ADMIN.

Hearing Date(s) 3/9 X C

EXEC ACTION 3/10 X C

_____ C

_____ C

Date Out _____ C

S. Committee on STATE ADMIN.

Hearing Date(s) 2/6 X C

2/10 X C

EXEC. ACTION 2/13 X C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

2/17	3RD READING PASSED	50	0
TRANSMITTED TO HOUSE			
2/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/14	HEARING		
3/15	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	92	0
3/29	3RD READING CONCURRED	97	0
RETURNED TO SENATE WITH AMENDMENTS			
4/01	2ND READING AMENDMENTS CONCURRED	48	0
4/04	3RD READING AMENDMENTS CONCURRED	48	1
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/17	RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS		
4/18	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	50	0
4/19	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	50	0
TRANSMITTED TO HOUSE			
4/21	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	94	1
4/21	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	94	5
RETURNED TO SENATE			
4/26	SIGNED BY PRESIDENT		
4/28	SIGNED BY SPEAKER		
5/01	TRANSMITTED TO GOVERNOR		
5/12	SIGNED BY GOVERNOR		
CHAPTER NUMBER 665 EFFECTIVE DATE: 5/12/89			

SB 286 INTRODUCED BY BECK, ET AL.
 REQUIRE VALID ELECTION ON BALLOT ISSUES

1/30	INTRODUCED		
1/30	REFERRED TO STATE ADMINISTRATION		
2/06	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	50	0
2/17	3RD READING PASSED	50	0
TRANSMITTED TO HOUSE			
2/21	REFERRED TO STATE ADMINISTRATION		
3/09	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	84	1
3/15	3RD READING CONCURRED	86	3

RETURNED TO SENATE WITH AMENDMENTS

SENATE FINAL STATUS

4/04	2ND READING AMENDMENTS CONCURRED	49	0
4/06	3RD READING AMENDMENTS CONCURRED	49	0
4/11	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/17	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 587	EFFECTIVE DATE: 10/01/89	

SB 287 INTRODUCED BY LYNCH, ET AL.
IMPOSE A STATEWIDE 2-MILL LEVY FOR COMMUNITY
COLLEGES AND VO-TECH CENTERS

1/30	INTRODUCED		
1/30	REFERRED TO TAXATION		
1/31	FISCAL NOTE REQUESTED		
2/06	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/07	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	37	12
2/17	3RD READING PASSED	38	12
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO TAXATION		
3/07	HEARING		
3/08	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	58	39
3/14	3RD READING CONCURRED	50	49
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	49	0
4/06	3RD READING AMENDMENTS CONCURRED	42	7
4/13	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/21	VETOED		

SB 288 INTRODUCED BY HAGER
REVISE DEFINITION OF PRACTICE OF PROFESSIONAL
NURSING AND THE DUTIES OF BOARD OF NURSING

1/30	INTRODUCED		
1/30	REFERRED TO STATE ADMINISTRATION		
2/03	HEARING		
2/13	COMMITTEE REPORT--BILL NOT PASSED		
2/13	ADVERSE COMMITTEE REPORT ADOPTED	43	5

SB 289 INTRODUCED BY HAGER
EXTEND LEASE TERM OF COUNTY NURSING HOMES FOR
MANDATED CAPITAL IMPROVEMENTS

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman William E. Farrell, on February 6, 1989, at 10:00 a.m. in Room 331, Capitol.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator John Anderson, Jr., Senator Esther Bengtson, Senator William E. Farrell, Senator Ethel Harding, Senator Sam Hofman, Senator Paul Rapp-Svrcek, Senator Tom Rasmussen, Senator Eleanor Vaughn

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure

HEARING ON SB 286

Presentation and Opening Statement by Sponsor:

Senator Tom Beck testified that SB286 is a bill to put before the voters of the State of Montana a constitutional amendment to allow any initiative, which is thrown out for procedural purposes, to be put back on the ballot for the next general election, after the corrections are made. He added it also requires that an initiative ballot can not be challenged until after the election.

Senator Beck pointed out that, in the last election, Initiative 30 gathered signatures and was put on the ballot. It was voted on and passed by the people. After the Legislature had recessed, the Supreme Court ruled that there was a procedural error, and it was thrown out on that basis. Senator Beck indicated this was one of the reasons for bringing this to the committee's attention. He noted that a lot of effort went into that initiative and, if that much effort is put into something, they have a right to go back to the people again, by having it put back on the ballot, without having to go through the whole process once more.

Senator Beck then pointed out the possibility exists that, if there was a ballot issue that someone did not like, they

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could just change some wording, so that it would get thrown out. He added that he thinks everything has to be looked at, constitutionally, but the situation with Initiative 30 was a procedural matter, and he added that he certainly hopes the committee will consider this.

List of Testifying Proponents and What Group they Represent:

Jim Whitehead, Executive Director, Montana Liability Coalition
Mike Cooney, Secretary of State
C. B. Pearson, Executive Director, Common Cause in Montana
Larry Dodge, Initiative Improvement Committee

Testimony:

Mr. Whitehead testified that the Montana Liability Coalition supports SB286, and indicated it is a very fair way to handle the whole situation. He noted the Coalition has gone through 2 years of working and hoping there would be a special session to get their Constitutional Amendment put on the ballot, but there was not, then they worked on gathering signatures, and that did not work out for a number of reasons. He noted he thinks this bill would help everyone out a lot. Mr. Whitehead indicated the Supreme Court not only took the vote away from the people that voted for CI-30, but it also took the vote away from the people who voted against it, and he does not think that is fair.

Testimony:

Mr. Cooney indicated he has talked with some of the people who have been supporting this proposal, he thinks their intent is good, and that what they are trying to accomplish with this bill is good. He stated he has looked at it from the standpoint of the mechanics of his office, that he does not have any problems with it, and he thinks it may clear up some of the confusion that has existed in the past. Mr. Cooney added they are very concerned that the initiative process be maintained, as they understand the importance of maintaining the integrity of the initiative process, and he thinks this is a step in the right direction.

Testimony:

Mr. Pearson distributed copies of his written testimony to the committee members, a copy of which is attached as Exhibit 1, and indicated there would be a correction to this testimony. He stated he talked with his attorney regarding his interpretation of one portion of the Constitution that has changed

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things to some degree. Mr. Pearson testified the Common Cause is in support of SB286, but they would like to see an amendment to the bill. He noted they would like to see subsection 2 removed from the bill because they are concerned that it would limit the challenge on the constitutionality question early on. He noted that, in the last session, there was a bill put forth that set out a process by which a ballot issue could be challenged, constitutionally, and he thinks it is a straight-forward process and one which they support. He stated they are concerned that if constitutional challenges are not allowed up front, public support will be weakened for the initiative process. Mr. Pearson indicated that, if an issue is voted on and then, later, ruled to be unconstitutional, that will weaken the initiative process, and they are concerned about that.

Mr. Pearson reiterated that the Coalition does support having a question placed back on the ballot, if it has been removed for a technical reason, and they want to make that point very clear. He noted it is also clear, from their perspective, that some issues don't deserve to be on the ballot, if they do not meet constitutional tests and, therefore, it is improper to put them on the ballot, which would needlessly raise the hopes of people. Mr. Pearson indicated they think if they had a number of questions placed on the ballot that were later ruled unconstitutional, they would run into problems with public support for the process. He added they support the bill, and urge a do pass with amendments.

Testimony:

Mr. Dodge asked if the committee received a copy of his letter, a copy of which is attached as Exhibit 2. He indicated that some of the flaws that have appeared in some of the initiatives are too little of an excuse to "throw the baby out with the bath", and that he thinks it may be a good idea to correct some of the technical flaws, get the corrections known, and put it back up for a vote without going through the entire process.

Mr. Dodge stated that Montana has been very fortunate in having very good Secretaries of State, who have done everything they can to make sure the public is getting the correct information before going to the polls, but it is possible, some time down the road, that someone in that capacity could dislike a bill enough to deliberately inject a flaw. Mr. Dodge stated he does not know of anyone who has or would ever do that, but it is not impossible, is too great a risk, and puts too much power in the hands of one individual. He noted

that, if an initiative is completely thrown off the ballot and left off, it can be a very dangerous situation. He added that he thinks it is very wasteful of public and private resources to allow something to go so far and then, with a stroke of the pen, to throw out all the effort, all the voting, all the counting, canvassing, advertising, etc.

Mr. Dodge stated he thinks the court should be a referee in the process of making laws, he approves of judicial review, and can not imagine a world where laws could be made and there was no way to review them, but he added he does not know if the court should be a participant in the law-making process. At this point, Mr. Dodge stated he disagrees with Mr. Pearson, and indicated he thinks prior review is like prior restraint, and asked what it would be like to be a legislator, working on bills, and have the court come in and review it before the vote. He indicated that would not feel good, and it would also not feel good to the people who are working on initiatives and referendums, either. He noted he would not like to see that, but he does like to see judicial review and, so, he is in favor of review but not view. Mr. Dodge indicated that prior review has also become a tactic. He cited the example of a small grass-roots organization that wants to get something on the ballot. The group has a little money, is working hard to get people's attention directed toward an issue, and a special interest group that is well-heeled enough to afford a good court battle comes along and says they think it is unconstitutional, in advance. They can force them into court, and use up their entire resource base fighting just to keep it on the ballot. Mr. Dodge stated this shows the flaw in having things out of what he considers a proper sequence.

He indicated that, in 1986, the court did review a couple of initiatives, and they made a very weird statement. He stated that, before the election, they reviewed the initiatives, and said CI27 is "probably unconstitutional", but that they would let it go to a vote anyway. Mr. Dodge stated that, to him, that showed a great deal of discomfort on the part of the Supreme Court Justices. He indicated they are not used to judging something that does not exist yet, and what he thinks they were asking for is some kind of clarification; first let there be a law and then, if it is unconstitutional, they will go ahead and judge it. He added that he thinks they felt discomfort in judging it in advance, which is his opinion of why they would come up with a statement like that.

Mr. Dodge stated there is a 30-day period, after the signatures have been gathered and certified to the Governor, through the Secretary of State, during which a prior review

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challenge may be filed. He indicated that, to him, this more or less institutionalizes the problem, rather than cures it. He indicated it says you have 30-days to make a mess of things but, after that, you can not do it. He stated that does not solve the problem of what prior review means to the voter, or to the court, that it just puts a time limit on it and, in so doing, says it is okay to do that. Mr. Dodge indicated he is not real happy with that legislation and, if the constitution were amended in the way they are suggesting here, that would have to be changed.

Mr. Dodge addressed quality control. He indicated he is very concerned with quality control; that the public is probably not as well trained and does not have as much opportunity to debate the things that it would like to put to a vote, as the Legislature does. The Legislature has the Legislative Council and committees, plus expertise in politics, and the Legislature makes better laws, in general. On the other hand, he indicated, if quality control is taken off shoulders of the people who are writing initiatives, and given to the courts, he does not believe they will ever take it seriously. He indicated that he thinks, unless they have to suffer the consequences of passing a bill, and having the court find it unconstitutional, they are never going to take seriously the responsibility for writing good laws. Mr. Dodge stated he thinks it should be the responsibility of the sponsors, and not of the courts, to pre-judge how good the work is that is going on the ballot.

Mr. Dodge stated that, when a law is passed by the Legislature, and signed by the Governor, it carries with it the presumption of constitutionality. He added he recently had the experience of challenging a law for its constitutionality in court, and learned very quickly that this is the way it is. The burden of proof that it is not constitutional falls upon the challenger, and it is difficult, because a well-intended Legislature is given the presumption of constitutionality when it passes an act. Mr. Dodge added that, in the case of an initiative, he does not think that is true, but he does not know that, and would like to research that further. He added that he believes an initiative does not carry with it the assumption that it is constitutional just because it passed. He noted that would mean, in a challenge situation, the burden would be shared equally. The challenger and defender would both have to come up with good arguments as to why it is or is not constitutional, and there is no presumption. He indicated that actually weakens the case for the proponents of the initiative; they have to do a better job than they would if it were the Legislature that had passed the same law.

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Mr. Dodge reported that, last year, he received a phone call from Secretary of State Jim Waltermire, who was asking his opinion regarding whether or not to put initiatives 30 and 27 back on the ballot in the June primary for 1988. Mr. Dodge indicated he asked Mr. Waltermire if he wanted to know the right and moral thing to do, or the politically "cool" thing to do. He noted that Mr. Waltermire asked for both opinions. Mr. Dodge then reported he told Mr. Waltermire it was the right thing to do; first of all, it is the right thing to do because the people went to a great deal of trouble to get those things on the ballot, and they deserve a valid election. Second, Mr. Dodge indicated, these are diverse types of initiatives; one is conservative and would ban taxation of property, and the other would help the insurance industry and limit lawyer's ability to gather contingency fees and, therefore, maybe reduce the price of litigation. Mr. Dodge reported he told Mr. Waltermire that, in either case, the initiatives were so different from the one another, that Mr. Waltermire would not be labeled a conservative or a liberal, that he would be labeled a "good guy" because he took the ball that was handed to him by the court, and went ahead and put it back on the ballot so the people would have a vote. At this point, Mr. Dodge indicated there was not much clarity, that the whole decision was in the hands of the Secretary of State, which puts him in a "good guy/bad guy" position, which is why Mr. Waltermire was soliciting advise. Mr. Dodge added that these initiatives were put back on the ballot, but were stricken off by the court, and there never was a "valid" election on either of those initiatives.

Mr. Dodge indicated that, when he was running for the office of Secretary of State, he wondered how bad he would feel if he got the job and then, along the line, he made an error, and something was thrown out because of a small error in the text, and there was no way to correct it. He indicated he thinks the pressure on the Secretary of State's office, alone, is sufficient to warrant the re-election section of this bill. Mr. Dodge closed by saying he thinks this bill patches a couple of bad holes in our right to vote, the range of things the public can vote on, and whether there will be a valid election. He noted he thinks these are 2 important tears in the fabric of our right to vote; the courts are in a confused and confusing role, the Secretary of State is in a confused and confusing role, and he thinks the Legislature has a marvelous opportunity to put this for a vote of the people, and repair the fabric. Mr. Dodge stated he hopes the committee will send this to the Senate with a do pass recommendation.

Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

- Q. Senator Rapp-Svrcek indicated to Mr. Dodge that he is concerned about subsection 2. He indicated he thinks it might conflict with Article II, Section 16 of the Constitution, which states "courts of justice shall be open to every person and speedy remedy afforded for every injury of person, property or character". Secondly, Senator Rapp-Svrcek cited the example of the Pace Amendment people somehow getting the signatures necessary to put something on the ballot which says that no one other than a white person is allowed to live in the State of Montana. Senator Rapp-Svrcek stated that, if something like that were to pass, it could not be challenged constitutionally prior to the election, and this is something that is clearly, on its face, unconstitutional. He noted that, while this is an extreme case, he thinks it is a valid concern.
- A. Mr. Dodge asked if these were two separate concerns, and asked Senator Rapp-Svrcek to explain why he does not think a speedy remedy is possible.
- Q. Senator Rapp-Svrcek indicated he is concerned about having to wait until after something has been voted on, if there is a valid constitutional question, and he wonders if their access to speedy remedy will be hindered by making them wait until after the vote has been taken, as opposed to challenging the constitutionality of something prior to placing it on the ballot, or prior to it being voted on.
- A. Mr. Dodge responded that he is not sure he could give a good answer because he does not know what the status of the ballot issue, as law, would be while it is being challenged in court. He indicated that, if a remedy could be injected so that, until it has cleared the court it is not law, that would solve both of the problems. He indicated he would consider that a friendly amendment, if there is some way to do it.

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Closing by Sponsor:

Senator Beck indicated that he understands Senator Rapp-Svrcek's concerns, but suggested that the committee remember the sophistication of the Montana voters. He noted that he thinks it would hard to get signatures on a petition such as what Senator Rapp-Svrcek was talking about, noting that is the first line on controlling the initiative process. Senator Beck indicated that, even if it went to an election, the Montana voters would not vote for it. He further indicated that some valid issues are being challenged by small interest groups, and it is not necessarily in the interest of all of the Montana voters. Senator Beck noted they are trying to say get it to the courts, see what the Montana people feel and, if it is unconstitutional at that time, let the Supreme Court make the final decision. He urged the committee's support on this constitutional amendment, noting he thinks it is a good one, and something that the Montana people will go for if given the opportunity to vote for it. Senator Beck recommended a do pass.

Chairman Farrell announced the hearing on SB286 as closed.

HEARING ON SB 297

Presentation and Opening Statement by Sponsor:

Senator Swede Hammond reported that this bill passed last session, but was vetoed by the Governor. He indicated the bill was brought to him by the small towns in his area, and many others in the state, but that they could not appear today because of the weather. Senator Hammond reported the bill restricts the publication of audit reports to a summary of significant findings and a statement that the report is on file and open to public inspection. He noted the bill was amended to state it shall include a summary of significant findings not to exceed 800 words, and a statement to the effect that the audit report is on file, in its entirety, and anyone who wishes to receive it can do so. He noted the government entity will send a copy of the audit report to any interested person.

List of Testifying Proponents and What Group they Represent:

Alec Hanson, Montana League of Cities and Towns
Shelly Laine, City of Helena
Don Peoples, Chief Executive, Butte-Silver Bow
Beverly Gibson, Montana Association of Counties

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE:

February 6, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.	✓		
ESTHER BENGTSO	✓		
WILLIAM E. FARRELL	✓		
ETHEL HARDING	✓		
SAM HOFMAN	✓		
PAUL RAPP-SVRCEK	✓		
TOM RASMUSSEN			
ELEANOR VAUGHN	✓		



COMMON CAUSE/MONTANA

P.O. Box 623
Helena, Montana 59624

(406) 442-9251

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 2/6/89

BILL NO. SB 286 pg 1

STATEMENT OF COMMON CAUSE ON SENATE BILL 286

Mr. Chairman and members of the Senate State Administration Committee, for the record, my name is C. B. Pearson, Executive Director of Common Cause in Montana. On behalf of Common Cause members we would like to go on record in support of SB 286, if amended.

We support the holding of an election on an initiative or referendum that has properly qualified but was declared invalid because the election was improperly conducted.

We do not however support subsection (2) whereby the substance of an initiative or referendum may not be challenged in court prior to an election on the issue. We would advocate that this committee remove this subsection and give the amended version a "do pass" recommendation.

Our reading of subsection (2) in SB 286 and Article III, Section 4, subsection (3) of the Montana Constitution which states, "The sufficiency of the initiative petition shall not be questioned after the election is held" would, if implemented, seem to limit any challenge to the constitutionality of a given initiative or referendum. If this is the case, a given initiative or referendum, although clearly unconstitutional, could be placed before the people of Montana and, if the electors decide, become law.

Common Cause is concerned that the passage of such a provision limiting challenges to the constitutionality will weaken public support for the initiative and referendum process. The people of Montana need to have faith in the direct democracy process that they own. It is a fallacy to expect that every idea should be placed before the people. We have a system of checks and

balances to ensure that no one body infringes upon our rights. Subsection (2) of SB 286 would seem to encourage an overriding of this system of checks and balances.

Common Cause has been and continues to be a strong advocate of the initiative and referendum process. We are, however, concerned that SB 286 as currently written would only serve to weaken public support for this form of direct democracy.

In 1987, there was debate on challenges to initiative and referendum that resulted in changes in Montana law. Those changes establish a process to challenge an initiative or referendum. I have attached that section of the law to my testimony.

The current process for challenges is expedient and fair. We need to have a clear-cut manner for challenges or the other hand we also need to place bona-fide initiative or referendum back on the ballot if the first election is declared invalid because the election was improperly conducted.

Part 2

Supreme Court Jurisdiction

Part Cross-References

Jurisdiction of Supreme Court, Art. VII, sec. 2, Mont. Const.

3-2-201. Types of jurisdiction. The jurisdiction of the supreme court is of two kinds:

- (1) original; and
- (2) appellate.

History: En. Sec. 18, C. Civ. Proc. 1895; re-en. Sec. 6250, Rev. C. 1907; re-en. Sec. 8802, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 50; re-en. Sec. 8802, R.C.M. 1935; R.C.M. 1947, 93-213.

3-2-202. Original jurisdiction. (1) Except as provided in subsection (3), in the exercise of its original jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.

(2) It also has power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.

(3) (a) Except as provided in subsection (3)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

- (i) violation of the law relating to qualifications for inclusion on the ballot;
- (ii) constitutional defect in the substance of a proposed ballot issue; or
- (iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (3)(a)(i) or (3)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in subsection (3) limits the right to challenge a measure enacted by a vote of the people.

History: En. Sec. 19, C. Civ. Proc. 1895; re-en. Sec. 6251, Rev. C. 1907; re-en. Sec. 8803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 51; re-en. Sec. 8803, R.C.M. 1935; R.C.M. 1947, 93-214; amd. Sec. 1, Ch. 540, L. 1987.

Compiler's Comments

1987 Amendment: In (1), at beginning, inserted exception clause relating to subsection (3); and inserted (3).

Cross-References

Right to habeas corpus, Art. II, sec. 19, Mont. Const.

Power of appellate court not limited, Rule 62(g), M.R.Civ.P. (see Title 25, ch. 20).

Acceptance and manner of conducting original proceedings in Supreme Court, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Injunctions, Title 27, ch. 19.

Writ of Certiorari, 27-25-102.

Writ of Mandamus, 27-26-102.

Writ of Prohibition, 27-27-102.

Proceeding for unlawful assertion of authority, 27-28-101.

Habeas corpus — rights and procedure, Title 46, ch. 22.

3-2-203. Appellate jurisdiction. The appellate jurisdiction of the supreme court extends to all cases at law and in equity.

History: En. Sec. 20, C. Civ. Proc. 1895; re-en. Sec. 6252, Rev. C. 1907; re-en. Sec. 8804, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 52; re-en. Sec. 8804, R.C.M. 1935; R.C.M. 1947, 93-215.

3-2-204. Powers and duties of court on appeals. (1) The supreme court may affirm, reverse, or modify any judgment or order appealed from

DATE 2/6/89BILL NO. SB286 p21

Senator William E. Farrell, chairman
and members
State Administration Committee
Montana Senate
State Capitol
Helena, MT 59620

February 3, 1989

Dear Senators:

I write to testify in favor of SB 286, "Valid Election Required on Ballot Issues." I hope to appear at the hearing scheduled for Monday, Feb. 6, weather permitting, but am writing in case I cannot.

SB 286 is aimed at alleviating a related pair of problems which have arisen in Montana's initiative/referendum process. First, it seeks to ensure that a valid election is held whenever the original election on a ballot issue is voided by the courts for procedural flaws in the election process.

At present, when a ballot-issue election is voided for such reasons as misprints in the voter information pamphlet or errors in the publication of the text of the measure in local newspapers, the Montana Supreme Court recognizes no constitutional basis for holding a reelection. Thus, even for the smallest of reasons, any ballot-issue election may be voided, without recourse by the sponsors or the voters. As I see it, this threatens the very concept of popular sovereignty upon which our system of government is supposed to be based.

The current situation also implies considerable waste--of all the energy and resources that went into designing, editing, filing, printing, petitioning, debating, advertising, voting, canvassing, publishing, and/or implementing each ballot issue--should it be "disqualified on a technicality" by the court.

SB 286, if placed on the 1990 ballot by the 1989 Legislature, and approved by the voters, would correct this problem by supplying a clear constitutional basis for resubmission of any ballot issue so voided to the voters at the next regularly scheduled statewide election. In my opinion, this is an important protection of our right to vote. Additionally, I believe it properly confines the role of the courts to that of referee, rather than participant, in the process of adoption or rejection of ballot issues as law.

Second, approval of the amendment offered by SB 286 would allow for judicial review of a ballot issue only after it has actually become law, in the same fashion as legislation. To me, this is foremost a matter of fairness and a proper sequence of events: to allow judgement of ideas before they become law has an awful ring of "prior restraint" to it, and our research shows that the public isn't any happier about it than the Legislature would be, if the court could intervene in its deliberations, and prevent some of them from coming to a vote. I hope the committee shares my view that constitutionality a ballot issue should remain a moot point until and unless the issue becomes law.

There are other reasons that prior review of ballot issues should be replaced by the more usual procedure. It has become a "cheap shot" strategy for opponents of initiatives to force proponents to spend all their resources in court, trying to keep their issue qualified for the ballot, instead of on promotion, advertizing, and education during the last few months before election. This means that whenever a modestly funded, grass-roots ballot issue is opposed by large, well-heeled interests which can afford court costs, a tremendous advantage accrues to the opponents. It makes the initiative/referendum process, in many instances I can think of, a rich man's game, and that just isn't the idea.

In the last session, the Legislature approved a bill which provides that prior judicial reiview is permissible only if the challenge is filed within thirty days of the date on which the issue was certified to the governor as duly qualified for appearance on the ballot. While this prevents last-minute strategies of judicial entanglement from occurring, it also in effect institutionalizes those strategies, legitimizing them by providing a time limit for them. To me, this aggravates, rather than solves the basic problem of posing "court action" as a threat against initiative proponents.

The usual question I'm asked about the "no prior review" provision of SB 286 is whether quality control of ballot issues might be diminished. I contend that it certainly would not. The review process would merely be put in proper sequence, not dispensed with. And, since initiative sponsors would know in advance that their entire effort could be destroyed, even after voter approval, there would be that much added incentive not to prepare their proposal "on the back of a napkin", and not to ignore the advice given them by the Legislative Council. Nothing generates responsible action like facing the full consequences of irresponsibility.

Finally, in this regard, as far as I can determine, initiatives (and perhaps referendums) do not enjoy the presumption of constitutionality that legislated acts do. This means that the burden of proving constitutionality, or lack thereof, would fall equally upon proponents and opponents in court, whenever judicial review is undertaken. This would make it very difficult for "bad law" to survive the review, regardless of its popularity at the polls.

In sum, my feeling is that prior review unnecessarily subjects the range of choice voters can make to judicial screening, and in the process involves the court in lawmaking. To me, these are problems worthy of prevention by approving SB 286.

I think a few words about the Initiative Improvement Committee, which did the "R & D" work behind SB 286, may be of interest. We are a non-partisan (or more correctly, a multi-partisan) group with a common interest in seeing the initiative process work well in Montana. Our first meeting was in 1987, in the aftermath of a two-day conference on ballot issues, which featured an "Initiatives Fair". Initiative ideas of all types, from many points along the political spectrum, were presented at the fair, for comment and critique by the audience. But among those who stayed afterward, the consensus was that first, some problems with the process itself needed attention, before pursuit of any particular goal by initiative would be worth the effort and risk.

Our first ambition, then, was to improve the process by initiative. Thus began a project you may remember as the "Initiative Initiative." Several

DATE 2/6/89BILL NO. SB286 pg 3

meetings and nearly a year later, it emerged as CI-53. It had many provisions, (probably too many), as you might expect from such a politically broad-based committee. Mostly because it wasn't completed until a few weeks before the deadline for turning in signatures to qualify issues for the 1988 ballot, we decided not to try for qualification. Instead, with the consensus of the committee, I turned its many provisions into questions on a questionnaire, which I circulated while campaigning around the state for public office that summer and fall.

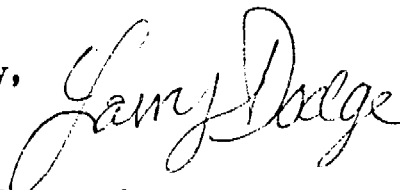
Another reason we didn't try to gather signatures was the fact that the Supreme Court had just recently ruled that CI-30, whose election in 1986 was voided by reason of flaws in publications which explained it, could not reappear on the 1988 ballot. This may partly explain why the questionnaire item which asked about holding reelections in such instances received so many affirmative responses. It certainly escalated our resolve to pursue some kind of remedy for this problem. And it may even explain why only two of the many initiatives which were filed with the Secretary of State last year actually earned a place on the ballot: both sponsors and voters were thinking, "Why bother?"

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In a very real sense, given its genesis in public opinion, SB 286 has been "written by the people". And just to be sure that the questionnaire wasn't selective of only those with a particular point of view about ballot issues, the Initiative Improvement Committee compared the answers given by different categories of respondents, and found almost no differences, then conducted a random telephone poll of Montana voters to see if their opinions differed significantly from those given by questionnaire respondents. I'll let another committee member, Rick Mason, present the results, but can assure the committee that many minds seem to be running in the same direction on the reforms proposed in SB 286. I offer the long list of legislators who signed off on this bill before its introduction as further evidence of general consensus.

I thank the State Administration Committee for its indulgence in listening to (or reading) my rather lengthy testimony in support of SB 286, and close by urging its approval of this bill.

Sincerely,



cc: committee members,
Sen. Tom Beck
Rep. Bud Campbell

Larry Dodge, spokesperson
Initiative Improvement Committee
P.O. Box 60
Helmville, Montana 59843
Phone 793-5703

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

DATE: _____

February 6, 1989

NAME	REPRESENTING	BILL #	Support	Oppose
DALE TALIAFERRO	DAES	296		
Mike Voeller	Lee Enterprises	297		
JIM WHITEHEAD	LIAB. CAUTION	286	✓	
Shelly Laine	City of Helena	297	✓	
TOM POSEY	Administration of the State	296		✓
John McCrean	M. N. P. & H	296		✓
Ray Hammond		297		
Ken Moore	BOV	296		✓
Bob Anderson	Art of Inst	296		
Clark Munn	Selex	286		
Steve Walton	Mental Health Center	296	✓	
Mike Coxsey	Sec. of State	286	✓	
CB. PEARSON	Common Cause	286	✓	with Amendment
SOLO THOMPSON	ME-TO-HE-TO-TO	296	✓	with Amendment
Larry Dodge	Initiative Program ment Committee	286	✓	
Beverly Gibson	mt. am co's	297	✓	
Don Ruppberg	Boyle & Co. Bon Guit	297	✓	
Tom Hays	SP 4 B	296	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE COMMITTEE ON STATE ADMINISTRATION

February 10, 1989

Page 12 of 16

Arts Council, but that he had the privilege of serving in the 70's, and it was one of the most enjoyable boards or committees that he has served on, noting he has served on quite a few. Senator Yellowtail stated that it is a burden for people, the classic "struggling artist" types, to come to the meetings. He noted the travel expenses help but, in general, they lose money, and he thinks this will permit them to not lose money as they serve.

Chairman Farrell announced the hearing on SB325 as closed.

OTHER BUSINESS

Discussion: SB 82

Chairman Farrell indicated that SB82, which was reported out of committee in January, has been referred back to the committee for further discussion. He added that the sponsor, Senator Nathe, has asked the committee to place SB82 on the table.

Senator Harding offered a motion that SB82 be placed on the table.

Recommendation and Vote:

Motion passed by the committee that SB82 be placed on the table.

Discussion: SB 286

Chairman Farrell asked Senator Rapp-Svrcek if the proposed amendments to SB286 are ready.

Senator Rapp-Svrcek responded the amendments are ready, and reported he talked, at length, with Mr. Dodge, the Secretary of State's office, and the staff attorney regarding the first sentence of sub (2), line 19, page 1. He noted that, as written, he thinks it would preclude any constitutional challenge prior to an election, which concerns him a great deal, adding Mr. Dodge saw that concern as well. He indicated the amendment would strike that sentence, making it clear that what is being limited in this bill are technical challenges, and that Mr. Dodge was comfortable with that, as is the chief sponsor of the bill, Senator Beck. Senator Rapp-Svrcek then informed the committee that what happens now is, unless something is blatantly unconstitutional on its face, or under absolutely extraordinary circumstances, the Supreme Court will

SENATE COMMITTEE ON STATE ADMINISTRATION

February 10, 1989

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say it may or may not be unconstitutional, but they will not rule on it until after it has been voted on. He indicated that, if this sentence is left in, even under those extraordinary circumstances, such as the example he gave of the white supremacists, the Supreme Court would not rule on that prior to the vote. He noted that, by striking the sentence, the ability of the Court to make a ruling, seeing these extraordinary circumstances, is maintained.

Chairman Farrell asked if it is possible for the Supreme Court to rule that something is blatantly unconstitutional, and still have it placed on the ballot, with this amendment. Ms. McClure responded that she and Senator Rapp-Svrcek discussed this, and that it could happen in unusual circumstances. She referred to subsection (1), which states "An initiative or referendum that qualifies for the ballot in Article 3 or Article 14", which is gathering of petitions, signatures, etc., "shall be submitted to the qualified voters, as provided, unless election is held pursuant to this section." She indicated, if the voters and petitioners have done everything correctly, and have all qualified names and signatures, the Supreme Court could indicate it is unconstitutional, but the statement that it "shall be submitted", could insure that it will still go on the ballot, if it qualifies under all the other procedures.

Senator Rapp-Svrcek asked Ms. McClure what if, on page 2, line 2, after "improperly conducted", something was put in about these extraordinary circumstances, where the Supreme Court makes a ruling that it is unconstitutional on its face. Ms. McClure responded that her concern is that subsection (2) states if it "qualifies", and it does say "shall be submitted". There was discussion between Senator Rapp-Svrcek and Ms. McClure on this issue, and Ms. McClure indicated that Senator Beck's concern was that he does not want the Supreme Court coming out, ahead of time, and biasing it one way or the other; he does not want the public to hear from the Supreme Court. She noted that is why the sentence, under subsection (2) was put in, and pointed out that, if it is taken out, it will revert back to what is being done now.

Chairman Farrell indicated this does not actually refer to the Supreme Court and asked, if the case was heard first in district court, and an opinion was issued which was deferred to the Supreme Court, would this not prejudice the voters. Ms. McClure responded that, under the initiative process, they go directly to the Supreme Court, with a 30 day challenge. She noted it can be challenged for improper signatures, constitutionality, etc. and, by taking out that sentence, the

SENATE COMMITTEE ON STATE ADMINISTRATION

February 10, 1989

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process would go back to what we have now, that the Court can step in inside 30 days, which has created havoc. Chairman Farrell indicated the original suit on CI-18 was filed in Butte, at a district court level, it was ruled on, and appealed in the Supreme Court.

Senator Rapp-Svrcek indicated he talked with Mr. Dodge about this issue, that he is comfortable with this, and their primary goal is to not allow a technical flaw to keep something from the ballot. Senator Rapp-Svrcek indicated Mr. Dodge shares his concerns regarding a lack of a challenge on substance of issue, that perhaps these amendments are not thorough enough, but he thinks it needs something like this before it passes. Ms. McClure indicated Mr. Dodge's main concern was technical, which is why the title was changed to insert "technical", and that it will do that. She noted it is possible that, by doing this, there could be a qualified ballot that has been ruled unconstitutional.

Senator Rasmussen asked Senator Rapp-Svrcek if he is comfortable with this. Senator Rapp-Svrcek responded he thinks the issue raised by the Chairman is legitimate, that it will continue to be raised somewhere in the process, and that it will be corrected, noting he is confident of that. He indicated the committee could hold the bill and work with it. Senator Rasmussen indicated he does not think it will be corrected on the floor.

Senator Rapp-Svrcek noted that Mr. Dodge is in agreement with the intent, that perhaps the committee should vote on the amendments, and the bill, and "watch-dog" it in the house, raising the issue there. Ms. McClure indicated, in that time, the committee may come up with a possible solution to deal with "shall be submitted", that something can not be put on the ballot that has been declared unconstitutional. Senator Rasmussen indicated he is not confident of everything working out, that it is important when it goes to the voters. He noted he does not see this bill getting hung up, and there is the opportunity to refine this language, if someone else can bring some thinking to this at this point. Senator Rapp-Svrcek indicated perhaps one of the Judiciary members could. Senator Rasmussen indicated to Chairman Farrell that he does not think we are quite at the crunch state yet and, if we could get this thing fixed up right, it would be better.

Chairman Farrell indicated that, by next Monday, the bills currently in the committee have to be reported out, or they will be caught in the crunch, and there are more bills still to be referred to this committee that must be heard and acted

SENATE COMMITTEE ON STATE ADMINISTRATION

February 10, 1989

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on rapidly. He added bills have to be out of committee by the 40th day in order to make it through the process. Senator Rapp-Svrcek indicated he would withdraw the amendments, and stated he would work with Ms. McClure on them.

Discussion: SB 288

Chairman Farrell reported that the Legislative Auditor indicated SB288 appears to fall under Sunrise, that it adds to the duties of an existing licensing board. He reported he talked with the Department of Health, who indicate this does not license; it simply sets standards for these people to maintain before they can work in nursing homes. The Department of Health also states the Board of Nursing already has these programs in place, and the Department of Health has asked for additional money and additional personnel to run the program, if they have to. He noted they are in a neutral position, and that the Board of Nursing can run it now.

Senator Rasmussen indicated that one solution out of the dilemma of sunrise is to kill the bill. Chairman Farrell indicated that it is the Legislative Auditor's opinion to leave it in committee until the Rules Committee acts on licensure, noting the Rules Committee is scheduled to meet on Monday to look at a bill referred by Senator Jacobson.

Senator Harding suggested leaving the bill in committee. Senator Rasmussen asked Chairman Farrell if he is suggesting tabling the bill, indicating he does not like the bill, that he would suggest killing the bill, and not worrying about it. Senator Rasmussen then offered a motion that SB288 do not pass. He stated it sounds to him like it would be better left with the Department of Health, which is already geared up to do it, the nursing homes would be more comfortable, and the job would get done, noting he thinks it is probably going as it should go, now, without these changes.

Senator Abrams indicated he received quite a few comments in the mail, and these people would be happy if the bill was killed. Senator Rapp-Svrcek indicated he has nothing to add to that.

Recommendation and Vote:

Motion passed by the committee that SB288 do not pass.

Discussion: SB 336

Chairman Farrell opened discussion regarding SB336. Senator Rasmussen indicated there was a suggested amendment, which

SENATE COMMITTEE ON STATE ADMINISTRATION

February 13, 1989

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process. He indicated he will look to work out amendment language with the legal counsel.

Chairman Farrell announced the hearing on SB352 as closed.

OTHER BUSINESS

Discussion: SB286

Chairman Farrell opened discussion on SB286. Senator Rapp-Svrcek indicated the amendments have been reviewed by the sponsor, Senator Beck, adding that the main thing they are trying to do with the bill is limit the technical challenges on ballot issues, and still maintain the public's access to the courts. Senator Rapp-Svrcek noted that the first amendment inserts, on page 1, line 17, following "unless", "the substance of a ballot issue is declared unconstitutional by a court of competent jurisdiction, or". He noted the second amendment would strike the first sentence on sub (2), lines 19 through 21, indicating this would allow the public access to the courts, adding that the first amendment makes it clear that, if the court declares something unconstitutional prior to an election, it does not get placed on the ballot. Senator Rapp-Svrcek offered a motion that the amendments to SB286 be adopted.

Senator Rapp-Svrcek offered a motion that SB286 as amended, do pass.

Recommendation and Vote: SB 286

Motion passed by the committee that the amendments to SB286 be adopted.

Motion passed by the committee that SB286, as amended, do pass.

Discussion: SB 296

Chairman Farrell announced the hearing on SB296, which was held open until today, as closed.

Senator Bengtson offered a motion that the amendments to SB286 be adopted.

Senator Rapp-Svrcek indicated he could explain the amendments, but asked that Steve Waldron, Executive Director, Montana

SENATE STATE ADMIN.

EXHIBIT NO. 14

DATE 2/13/89

BILL NO. SB286

Amendments to Senate Bill No. 286
First Reading Copy

Requested by Senator Rapp-Svrcek
For the Committee on Senate State Administration

Prepared by Eddye McClure
February 13, 1989

1. Page 1, line 17.

Following: "unless"

Insert: "the substance of a ballot issue is declared
unconstitutional by a court of competent jurisdiction, or"

2. Page 1, lines 19 through 21.

Following: "(2)"

Strike: the remainder of line 19 through "issue." on line 21

SENATE STANDING COMMITTEE REPORT

February 13, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 286 (first reading copy -- white), respectfully report that SB 286 be amended and as so amended do pass:

1. Page 1, line 17.

Following: "unless"

Insert: "the substance of a ballot issue is declared unconstitutional by a court of competent jurisdiction, or"

2. Page 1, lines 19 through 21.

Following: "(2)"

Strike the remainder of line 19 through "issue." on line 21

AND AS AMENDED DO PASS

Signed: _____

William E. Farrell, Chairman

4/1/89
2/13/89
3:11 p.m.

the states surrounding Montana. North Dakota allows \$35 a day. Idaho reimburses actual lodging costs. Washington seems to vary from city to city, but it is between \$35 and \$47. Utah allows \$42 a day. Wyoming offers \$55 a day, which is total per diem. Montana is substantially lower in its room rate allowance than the surrounding states. He said that he thinks it is the consensus that the room rate allowance should remain at \$30 rather than amending the bill.

HEARING ON SB 286

Presentation and Opening Statement by Sponsor: Sen. Tom Beck, Senate District 24, introduced the bill. This bill proposes to amend the Montana Constitution to require that an initiative or referendum that qualifies for the ballot be submitted to the electors unless the substance of the ballot issue is declared unconstitutional by a court of competent jurisdiction or a new election is held. The bill requires the proposed amendment to be submitted to the voters at the November 1990 general election.

Sen. Beck said that when the Supreme Court ruled on Initiative 30, which would give the Legislature the authority to limit liability, they ruled on it on procedural grounds. He said he thought that the court's ruling was grossly unfair to the people who initiated the petition process to get the initiative on the ballot. We would like to amend Article IV of the Montana Constitution.

Sen. Beck submitted an amendment (Exhibit 13), which he said should have been put in the bill and was inadvertently forgotten.

Testifying Proponents and Who They Represent:

Larry Dodge, Initiative Improvement Committee

Rex Manuel, Montana Liability Coalition

Mark Mackin, Self

Garth Jacobson, Secretary of State's Office

C. B. Pearson, Executive Director, Common Cause in Montana

Propoent Testimony:

LARRY DODGE, representing the Initiative Improvement Committee, presented written testimony (Exhibit 14).

REX MANUEL, representing the Montana Liability Coalition, said that they have spent a lot of time and money to get these

referendums on the ballot. It is not fair to the people after they vote on a ballot to have it thrown out on a technicality.

MARK MACKIN said he is from Whitehall and has worked for a number of years as an initiative advocate. He has also worked on the Initiative Improvement Committee. He said that the Initiative Improvement Committee does have a legal base. He said he favors SB 286 because the initiative you save in the future may well be your own. He emphasized that the passage of the bill should not turn into a contest over whether Initiative 30 was right or wrong.

GARTH JACOBSON, representing the Secretary of State's Office, said that they want to go on record in support of SB 286. He said that in an ideal situation this legislation would not be necessary because if an election were run properly the first time around you would never have to worry about having another round. Unfortunately, in the real world, sometimes mistakes do occur. We hope that our administration will never make a mistake and have to face this situation, but if it does it would be nice to have a backup situation where another election could be held to make sure that the voters are not disenfranchised from their opportunity to speak up on matters or have their vote counted. He urged that SB 286 be concurred in.

C. B. PEARSON, Executive Director, Common Cause of Montana, presented written testimony (Exhibit 15) and a copy of the section of the Montana law dealing with challenges to initiatives and referendums (Exhibit 16).

Proponent Presenting Written Testimony But Not Testifying:

Lillian Kirkpatrick (Exhibit 17).

Testifying Opponents and Who They Represent: None

Questions From Committee Members: None

Closing by Sponsor: Sen. Beck said that there have to be amendments put in the bill. This bill will take a two-thirds vote in order for it to pass. He said he would appreciate the Committee's support as he thinks it is something the people need. Sen. Beck said that Rep. Campbell would carry the bill on the House floor.

DAILY ROLL CALL

STATE ADMINISTRATION COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date March 9, 1989

NAME	PRESENT	ABSENT	EXCUSED
Rep. Jan Brown, Chairman	✓		
Rep. Helen O'Connell, Vice Ch.	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Ervin Davis	✓		
Rep. Floyd "Bob" Gervais			✓
Rep. Janet Moore			✓
Rep. Angela Russell			✓
Rep. Carolyn Squires	✓		
Rep. Vernon Westlake	✓		
Rep. Timothy Whalen	✓		
Rep. Bud Campbell	✓		
Rep. Duane Compton	✓		
Rep. Roger DeBruycker	✓		
Rep. Harriet Hayne	✓		
Rep. Richard Nelson	✓		
Rep. John Phillips	✓		
Rep. Rande Roth	✓		
Rep. Wilbur Spring, Jr.	✓		

EXHIBIT 13

DATE 3-09-89

~~HB~~ 513 286

Amendments to Senate Bill No. 286
Third Reading Copy

For the House Committee on State Administration

Prepared by Lois Menzies
March 8, 1989

1. Title, line 14.

Following: "ON"

Insert: "PROPERLY QUALIFIED"

2. Title, lines 14 and 15.

" Strike: "AND" on line 14 through "ISSUE" on line 15

3. Page 2, lines 21 and 22.

Strike: "limiting" on line 21 through "election and" on line 22

4. Page 2, line 25 through page 3, line 1.

Strike: "limiting" on page 2, line 25 through "election and" on
page 3, line 1

EXHIBIT 14
DATE 3-09-89
HB SB 286

1763

Senator William E. Farrell, chairman
and members
State Administration Committee
Montana Senate
State Capitol
Helena, MT 59620

February 3, 1989

Dear Senators:

I write to testify in favor of SB 286, "Valid Election Required on Ballot Issues." I hope to appear at the hearing scheduled for Monday, Feb. 6, weather permitting, but am writing in case I cannot.

SB 286 is aimed at alleviating a related pair of problems which have arisen in Montana's initiative/referendum process. First, it seeks to ensure that a valid election is held whenever the original election on a ballot issue is voided by the courts for procedural flaws in the election process.

At present, when a ballot-issue election is voided for such reasons as misprints in the voter information pamphlet or errors in the publication of the text of the measure in local newspapers, the Montana Supreme Court recognizes no constitutional basis for holding a reelection. Thus, even for the smallest of reasons, any ballot-issue election may be voided, without recourse by the sponsors or the voters. As I see it, this threatens the very concept of popular sovereignty upon which our system of government is supposed to be based.

The current situation also implies considerable waste--of all the energy and resources that went into designing, editing, filing, printing, petitioning, debating, advertising, voting, canvassing, publishing, and/or implementing each ballot issue--should it be "disqualified on a technicality" by the court.

SB 286, if placed on the 1990 ballot by the 1989 Legislature, and approved by the voters, would correct this problem by supplying a clear constitutional basis for resubmission of any ballot issue so voided to the voters at the next regularly scheduled statewide election. In my opinion, this is an important protection of our right to vote. Additionally, I believe it properly confines the role of the courts to that of referee, rather than participant, in the process of adoption or rejection of ballot issues as law.

Second, approval of the amendment offered by SB 286 would allow for judicial review of a ballot issue only after it has actually become law, in the same fashion as legislation. To me, this is foremost a matter of fairness and a proper sequence of events: to allow judgement of ideas before they become law has an awful ring of "prior restraint" to it, and our research shows that the public isn't any happier about it than the Legislature would be, if the court could intervene in its deliberations, and prevent some of them from coming to a vote. I hope the committee shares my view that constitutionality of a ballot issue should remain a moot point until and unless the issue becomes law.

There are other reasons that prior review of ballot issues should be replaced by the more usual procedure. It has become a "cheap shot" strategy for opponents of initiatives to force proponents to spend all their resources in court, trying to keep their issue qualified for the ballot, instead of on promotion, advertizing, and education during the last few months before election. This means that whenever a modestly funded, grass-roots ballot issue is opposed by large, well-heeled interests which can afford court costs, a tremendous advantage accrues to the opponents. It makes the initiative/referendum process, in many instances I can think of, a rich man's game, and that just isn't the idea.

In the last session, the Legislature approved a bill which provides that prior judicial reiview is permissible only if the challenge is filed within thirty days of the date on which the issue was certified to the governor as duly qualified for appearance on the ballot. While this prevents last-minute strategies of judicial entanglement from occurring, it also in effect institutionalizes those strategies, legitimizing them by providing a time limit for them. To me, this aggravates, rather than solves the basic problem of posing "court action" as a threat against initiative proponents.

The usual question I'm asked about the "no prior review" provision of SB 286 is whether quality control of ballot issues might be diminished. I contend that it certainly would not. The review process would merely be put in proper sequence, not dispensed with. And, since initiative sponsors would know in advance that their entire effort could be destroyed, even after voter approval, there would be that much added incentive not to prepare their proposal "on the back of a napkin", and not to ignore the advice given them by the Legislative Council. Nothing generates responsible action like facing the full consequences of irresponsibility.

Finally, in this regard, as far as I can determine, initiatives (and perhaps referendums) do not enjoy the presumption of constitutionality that legislated acts do. This means that the burden of proving constitutionality, or lack thereof, would fall equally upon proponents and opponents in court, whenever judicial review is undertaken. This would make it very difficult for "bad law" to survive the review, regardless of its popularity at the polls.

In sum, my feeling is that prior review unnecessarily subjects the range of choice voters can make to judicial screening, and in the process involves the court in lawmaking. To me, these are problems worthy of prevention by approving SB 286.

I think a few words about the Initiative Improvement Committee, which did the "R & D" work behind SB 286, may be of interest. We are a non-partisan (or more correctly, a multi-partisan) group with a common interest in seeing the initiative process work well in Montana. Our first meeting was in 1987, in the aftermath of a two-day conference on ballot issues, which featured an "Initiatives Fair". Initiative ideas of all types, from many points along the political spectrum, were presented at the fair, for comment and critique by the audience. But among those who stayed afterward, the consensus was that first, some problems with the process itself needed attention, before pursuit of any particular goal by initiative would be worth the effort and risk.

Our first ambition, then, was to improve the process by initiative. Thus began a project you may remember as the "Initiative Initiative." Several

EXHIBIT 14
DATE 3-09-89
SB 286

383

meetings and nearly a year later, it emerged as CI-53. It had many provisions, (probably too many), as you might expect from such a politically broad-based committee. Mostly because it wasn't completed until a few weeks before the deadline for turning in signatures to qualify issues for the 1988 ballot, we decided not to try for qualification. Instead, with the consensus of the committee, I turned its many provisions into questions on a questionnaire, which I circulated while campaigning around the state for public office that summer and fall.

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I thank the State Administration Committee for its indulgence in listening to (or reading) my rather lengthy testimony in support of SB 286, and close by urging its approval of this bill.

Sincerely,

Larry Dodge, spokesperson
Initiative Improvement Committee
P.O. Box 60
Helmville, Montana 59843
Phone 793-5703



COMMON CAUSE/MONTANA

P.O. Box 623
Helena, Montana 59624

(406) 442-9251

EXHIBIT 15

DATE 3-09-89

~~HB~~ SB 286

STATEMENT OF COMMON CAUSE IN SUPPORT OF SENATE BILL 286

THURSDAY MARCH 9, 1989

Madame Chairwoman and members of the House State Administration Committee, for the record, my name is C. B. Pearson, Executive Director of Common Cause in Montana. On behalf of Common Cause members we would like to go on record in support of SB 286.

We support the holding of an election on an initiative or referendum that has properly qualified but was declared invalid because the election was improperly conducted.

We had some concerns with the bill as it was originally drafted and actively supported changes to the bill. We are supportive of the current legislation.

Common Cause has been and continues to be a strong advocate of the initiative and referendum process.

In 1987, there was debate on challenges to initiative and referendum that resulted in changes in Montana law. Those changes establish a process to challenge an initiative or referendum. I have attached that section of the law to my testimony.

The current process for challenges is expedient and fair. We need to have a clear-cut manner for challenges or the other hand we also need to place bona-fide initiative or referendum back on the ballot if the first election is declared invalid because the election was improperly conducted.

We would encourage a "do pass" recommendation on SB 286.

Part 2

Supreme Court Jurisdiction

Part Cross-References

Jurisdiction of Supreme Court, Art. VII, sec.
2, Mont. Const.

3-2-201. Types of jurisdiction. The jurisdiction of the supreme court is of two kinds:

- (1) original; and
- (2) appellate.

History: En. Sec. 18, C. Civ. Proc. 1895; re-en. Sec. 6250, Rev. C. 1907; re-en. Sec. 8802, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 50; re-en. Sec. 8802, R.C.M. 1935; R.C.M. 1947, 93-213.

3-2-202. Original jurisdiction. (1) Except as provided in subsection (3), in the exercise of its original jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.

(2) It also has power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.

(3) (a) Except as provided in subsection (3)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

- (i) violation of the law relating to qualifications for inclusion on the ballot;
- (ii) constitutional defect in the substance of a proposed ballot issue; or
- (iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (3)(a)(i) or (3)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in subsection (3) limits the right to challenge a measure enacted by a vote of the people.

History: En. Sec. 19, C. Civ. Proc. 1895; re-en. Sec. 6251, Rev. C. 1907; re-en. Sec. 8803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 51; re-en. Sec. 8803, R.C.M. 1935; R.C.M. 1947, 93-214; and. Sec. 1, Ch. 540, L. 1987.

Compiler's Comments

1987 Amendment: In (1), at beginning, inserted exception clause relating to subsection (3); and inserted (3).

Cross-References

Right to habeas corpus, Art. II, sec. 19, Mont. Const.

Power of appellate court not limited, Rule 62(g), M.R.Civ.P. (see Title 25, ch. 20).

Acceptance and manner of conducting original proceedings in Supreme Court, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Injunctions, Title 27, ch. 19.

Writ of Certiorari, 27-25-102.

Writ of Mandamus, 27-26-102.

Writ of Prohibition, 27-27-102.

Proceeding for unlawful assertion of authority, 27-28-101.

Habeas corpus — rights and procedure, Title 46, ch. 22.

3-2-203. Appellate jurisdiction. The appellate jurisdiction of the supreme court extends to all cases at law and in equity.

History: En. Sec. 20, C. Civ. Proc. 1895; re-en. Sec. 6252, Rev. C. 1907; re-en. Sec. 8804, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 52; re-en. Sec. 8804, R.C.M. 1935; R.C.M. 1947, 93-215.

3-2-204. Powers and duties of court on appeals. (1) The supreme court may affirm, reverse, or modify any judgment or order appealed from

TESTIMONY

1. Lillian Kirkpatrick, Box 1085, Helena, MT, representing IIC - here as a proponent of Senate Bill 286.
2. Thank Representative Jan Brown and all of you on the House State Administration Committee for your time today.
- 3.a. At present, whenever a ballot-issue election is voided for procedural flaws in the election process, such as misprints in the v.i.p. or in the publications of the text of the issue in local newspapers, the Montana Supreme Court recognizes no constitutional basis for holding another election on the issue. That became evident with dismal demise of CI-30, the 1986 Liability Limitation Insurance, approved by the voters but laid to rest forever by a small stroke of the Judicial Plan.
- b. For even the smallest of technical reasons, then, any ballot-issue election may be voided, without recourse by its sponsors or by the voters. The IIC finds this threatening to the very concept of popular sovereignty upon which our system of government is supposed to be based. The CI-30 decision has even opened the door for deliberate procedural mistakes to be made somewhere in the election process, and that's pretty scary.
- c. Legislative progress itself is vulnerable to disruption under current circumstances, since legislated acts designed to comply with or implement a ballot-issue result are for naught when a court decision to void a ballot-issue election follows

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a legislative session, and no re-election is provided for.

Again, I refer us to CI-30.

- d. There is also a tremendous waste of human energy, money, and public and private resources implied by the current state of affairs. Consider all that's lost when a voided ballot-issue election makes waste of all the writing, editing, filing, printing, petitioning, and implementing that go into every ballot issue.
4. Senate Bill 286 if placed on the 1990 ballot by this legislature, and approved by the voters, would provide a lasting remedy by amending our constitution to require that a valid and timely re-election be held whenever the original election on a ballot issue is voided for technical flaws in the election process.
5. As a Montana citizen, I look at this remedy as an important protection of my right to vote.
6. This bill, in its present form, is the result of considerable multi-partisan debate, opinion, research over the past 20 months. The details of which I'll be happy to discuss if anyone is interested. But I'll close for now by thanking you for your attention and by urging you to recommend passage of Senate Bill 286 to the rest of our state representatives. We're willing to drop the prior challenger issue (and did), but we don't want to reintroduce it by the addition on Page 1, Line 25; and Page 2, Lines 1 and 2.

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SB 286 here as a proposed amendment to SB 286.

① Name - address - ^{representing PPC} Rep. Jan Brown and all of you on the House State Admin. Committee for your

② Thank a Committee ~~for the way they have handled the situation~~

③ At present, whenever a ballot-issue election is voided for procedural flaws in the election process, such as misprints in the U.I.P. or in the ^{publication} text of the issue ~~as stated in~~ ^{local} newspapers, the Mt Supreme Court recognizes no constitutional basis for holding another election on the issue. ~~that became an official decision~~ of CI-30, the

1986 Liability Limitation ~~that was approved by the voters but largely not favored by a single member of the judicial panel~~
③ ~~Even for even the smallest of reasons, any ballot-issue election may be voided without recourse by its sponsors or by the voters.~~ ~~the very concept of popular sovereignty upon which our system of government is supposed to be based.~~ ~~the CI-30 decision has even opened the door for deliberate~~ ~~procedural mistakes to be made somewhere~~ ~~in the election process, and that's pretty scary.~~

~~the legislative process~~

itself is vulnerable to disruption under current circumstances,
④ ~~since legislated acts designed to comply with or implement a ballot-issue result~~ ~~when a court decision to void a ballot-issue election follows a legislative session, and no re-election is possible, provided for.~~ Again, I refer us to CI-30.

⑤ There is also a tremendous waste of human energy, money, and public and private resources implied by the current state of affairs. Consider all that's lost when a voided ballot-issue election makes waste of the writing, editing, filing, printing, petitioning, debating, advertising, voting, canvassing, publishing, and implementing that go into every ballot issue.

⑥ SB 286, if placed on the 1990 ballot by this Legislature, and approved by the voters, would provide a lasting remedy by amending our constitution to require that a valid and timely reelection be held whenever the original election on a ballot issue is voided for technical flaws in the election process.

⑦ As a Montana citizen, I look at this remedy as an

important protection of my right to vote. [Additional
I believe it properly confines the role of the court
to that of referee, rather than participant, in the
process of adoption or rejection of ballot issues as
law.]

~~for keeping it out, and preventing it
from being recognized as a part of the
constitution of the state~~

in its present form, multi-partisan
(6) This bill is the result of considerable debate and
opinion ~~research~~ ^{over the past 20 months} the details of which I'll
be happy to discuss if anyone is interested. But I'll
close for now by thanking you ^{for your attention,} and by urging you
to recommend passage
of SB 286 to the rest
of our state representatives.

We're willing to drop the "prior challenges"
issue (and did), but we don't want to
reintroduce it by the addition on lines p. 1,
25; and e, 1 & 2.

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

BILL NO. SB 286DATE March 9, 1989SPONSOR SENATOR BECK

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Larry Dodge	Initiative Improvement ^{Committee}	✓	
Jim Whitehead	MT-LIAB. COAL	✓	
C.B. Peterson	Common Cause	✓	
Garth Jacobson	Sec. of State		
Betty T. Lundy	Clerk & Recorder	✓	
Reif Manner	MT. Lib. Coal.	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DISPOSITION OF SB 286

Hearing Date: March 9, 1989

Motion: REP. ROTH moved SB 286 BE CONCURRED IN.

Discussion: None

Amendments, Discussion, and Votes: REP. ROTH moved the cleanup amendment. The motion CARRIED unanimously. REP. DEBRUYCKER moved the Larry Dodge amendment. REP. WESTLAKE asked if Sen. Beck agreed to this amendment. He was told that Sen. Beck had agreed to it. The motion CARRIED unanimously.

Recommendation and Vote: REP. ROTH moved SB 286 BE CONCURRED IN AS AMENDED. The motion CARRIED unanimously. Rep. Campbell will carry this bill on the House floor.

ADJOURNMENT

Adjournment At: 11:13 a.m.


REP. JAN BROWN, Chairman

JB/jb

5614.min

DAILY ROLL CALL

STATE ADMINISTRATION COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date March 10, 1989

NAME	PRESENT	ABSENT	EXCUSED
Rep. Jan Brown, Chairman	✓		
Rep. Helen O'Connell, Vice Ch.			✓
Rep. Vicki Cocchiarella	✓		
Rep. Ervin Davis	✓		
Rep. Floyd "Bob" Gervais	✓		
Rep. Janet Moore			✓
Rep. Angela Russell	✓		
Rep. Carolyn Squires	✓		
Rep. Vernon Westlake	✓		
Rep. Timothy Whalen	✓		
Rep. Bud Campbell	✓		
Rep. Duane Compton	✓		
Rep. Roger DeBruycker	✓		
Rep. Harriet Hayne	✓		
Rep. Richard Nelson	✓		
Rep. John Phillips	✓		
Rep. Rande Roth	✓		
Rep. Wilbur Spring, Jr.	✓		

STANDING COMMITTEE REPORT

March 10, 1989

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Mr. Speaker: We, the committee on State Administration report that SENATE BILL 286 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Jan Brown
Jan Brown, Chairman

[REP. CAMPBELL WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 14.

Following: "ON"

Insert: "PROPERLY QUALIFIED"

2. Title, lines 14 and 15.

Strike: "AND" on line 14 through "ISSUE" on line 15

3. Page 1, line 25 through page 2, line 2.

Strike: "THE" on page 1, line 25 through "OR" on page 2, line 2

4. Page 2, lines 21 and 22.

Strike: "limiting" on line 21 through "election and" on line 22

5. Page 2, line 25 through page 3, line 1.

Strike: "limiting" on page 2, line 25 through "election and" on page 3, line 1